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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/821,863

04/12/2004

Andreas Hamburger

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1849

20457

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10/29/2008

ANTONELLI, TERRY, STOUT & KRAUS, LLP

1300 NORTH SEVENTEENTH STREET

SUITE 1800

ARLINGTON, VA 22209-3873

EXAMINER

PELHAM, JOSEPH MOORE

ART UNIT

PAPER NUMBER

3742

MAIL DATE

DELIVERY MODE

10/29/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/821,863

**Applicant(s)**

HAMBURGER ET AL.

**Examiner**

Joseph M. Pelham

**Art Unit**

3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3, 4, 6, 8, 10-13, 29, 31 and 33-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3, 4, 6, 11, 12, 29, 31, 37, 38, 40, 41, 43 and 44 is/are rejected.
- 7) ☒ Claim(s) 8, 10, 13, 33-36, 39, 42 and 45 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-846)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

The application has been withdrawn from issue. A non-final action on the merits follows. Claims 3, 4, 6, 8, 10-13, 29, 31, and 33-45 are pending.

***Claim Rejections - 35 USC § 112***

Claims 31, 43, and 44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Each of the claims recites "at least one narrow side of the frames." This structural feature, the "narrow side," lacks antecedent basis in the claims. Insufficient structure has been recited to render this limitation clear and definite.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 3, 4, 6, 11, 12, 29, 37, 38, 40, and 41 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. 4884683.

It is noted that in the body of the claim, "PCT elements" and "a heating device" have been considered as intended use, and do not constitute patentable weight as claimed.

Ford (US 4,884,683) discloses a bottle carrier or tray or device 22 having an insulating frame (Fig. 1 or 4, tray 22 made of plastics, column 4, line 11) having parallel, spaced longitudinal struts (i.e., dividers) and longitudinally spaced crossbars (i.e., also dividers) 62 linking the longitudinal struts, and at least one contact plate (i.e., a base or upright members as set forth at column 4, line 9) held in the frame or tray 22 (on which can be placed bottles, cans, or PTC elements if so desired), wherein the struts and spaced crossbars or dividers 62 surround recesses or openings 64 for receiving the bottles (or PTC elements if so desired) and at least in a limited longitudinal portion (i.e., the length of the rectangular shape tray shown in Fig. 4) of the tray or frame 22, the contact plate or base is completely and tightly surrounded by the frame or tray 22.

It is further noted that since the claimed frame is an article or product, the method or process of forming or making or assembling the contact plate or base to the frame by molding, laminating, bonding is not germane to the patentability of the claimed frame or tray as a whole since the final product is still the product itself (i.e., product by process is still a product).

With respect to claim 29, in Figure 1 of Ford, one of the sidewall 30 can be interpreted as a contact plate where over most of its length, it is held in grooves or channels 32 of the frame or tray 22 formed in longitudinal struts or dividers 58.

***Allowable Subject Matter***

Claims 8, 10, 13, 33-36, 39, 42, and 45 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 31, 43, and 44 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph M. Pelham whose telephone number is 571-272-4786. The examiner can normally be reached on M-F 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on 571-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Joseph M. Pelham/  
Primary Examiner, Art Unit 3742  
10/15/08